

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

SHARON LEA MANNING WAID,)

Plaintiff,)

v.)

REJEANA V. FREEMAN, et al.)

Defendants.)

Civil Action No.: 2:06cv171-MEF

NOTICE OF REMOVAL & SUBSTITUTION

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. § 2679 (d) (2) and 42 U.S.C. § 1442a, *Sharon Lea Manning Waid v. Rejeana V. Freeman, et al.*, Case No. CV 2005-2185 (Circuit Court of Montgomery County, Alabama), is hereby removed to this Court, and the United States is substituted as party defendant for Rejeana V. Freeman. In support of this notice, the United States, by and through Leura G. Canary, United States Attorney for the Middle District of Alabama, respectfully states that:

1. Rejeana V. Freeman is a defendant in *Sharon Lea Manning Waid v. Rejeana V. Freeman, et al.*, Case No. CV 2005-2185 (Circuit Court of Montgomery County, Alabama). The complaint alleges that defendant Rejeana V. Freeman negligently and/or wantonly operated a motor vehicle causing it to collide with a motor vehicle driven by plaintiff Sharon Lea Manning Waid. Copies of all papers filed in the State court are filed with this Notice as Exhibit 1.

2. Rejeana V. Freeman is a Technical Sergeant (TSgt.) in the United States Air Force. She is assigned as an Air Force Paralegal. Pursuant to 28 U.S.C. § 2679 (d)(2), the United States Attorney for the Middle District of Alabama has certified that TSgt. Freeman was acting within the scope of her federal office or employment at the time of the incident out of which plaintiff's claim arise. *See* 28 C.F.R. § 15.3 (2003) (delegating the Attorney General's certification authority to the United States Attorneys). A copy of the Attorney General's scope-of-employment certification is filed with this Notice as Exhibit 2.

3. Removal to this Court has occurred by operation of law based upon the Attorney General's scope-of-employment certification. 28 U.S.C. § 2679(d)(2). The Attorney General's certification conclusively establishes removal jurisdiction in this Court. 28 U.S.C. § 2679(d)(2); *Gutierrez De Martinez v. Lamagno*, 515 U.S. 417, 431 (1995).

5. Substitution of the United States as party defendant for TSgt. Rejeana V. Freeman has occurred by operation of law, and this action shall proceed as an action against the United States under the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b), 2671-2680. 28 U.S.C. § 2679 (d)(2).

6. Defendant also effects removal of this action pursuant to 42 U.S.C. § 1442a. TSgt. Freeman is a member of the Armed Forces of the United States. She is sued on account of an act done under color of her office or status as a non-commissioned officer

in the United States Air Force. The absolute immunity provided by the Westfall Act, 28 U.S.C. § 2679 (d)(2) constitutes a federal defense that provides a basis for removal of this action pursuant to *Mesa v. California*, 489 U.S. 121, 133 (1989).

WHEREFORE, pursuant to 28 U.S.C. § 2679 (d) (2) and 28 U.S.C. § 1442a, *Sharon Lea Manning Waid v. Rejeana V. Freeman, et al.*, Case No. CV 2005-2185 (Circuit Court of Montgomery County, Alabama)(Reese, E.) has been removed to this Court, and the United States has been substituted as party defendant for TSgt. Rejeana V. Freeman.

Respectfully submitted this 23rd day of February, 2006.

LEURA G. CANARY
United States Attorney

By: 

STEPHEN M. DOYLE
Chief, Civil Division
Assistant United States Attorney
Attorney for Defendant
Post Office Box 197
Montgomery, AL 36101-0197
District of Columbia Bar No. 422474
Telephone No.: (334) 223-7280
Facsimile No.: (334) 223-7418
E-mail: stephen.doyle@usdoj.gov

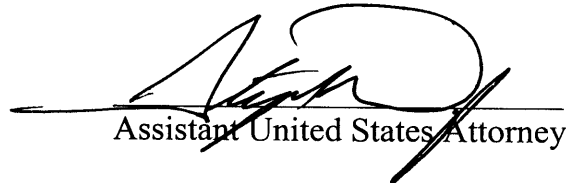
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Notice of Removal and Substitution upon all attorneys of record by mailing each a copy of same, first class, postage prepaid, addressed as follows:

Tom Payne, Esquire
305 South Lawrence Street
Montgomery, AL 36104
Attorney for Plaintiff

Richard Corrigan, Esquire
Post Office Box 7501
Mobile, AL 36670
Attorney for Budget Rental Car

Dated this 23rd day of February, 2006.


Assistant United States Attorney